

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOHN H. BENGE, JR.,
PETITIONER

v.

RICK KEARNEY, WARDEN
SUSSEX CORRECTIONAL
INSTITUTION,
RESPONDENT

05 - - 550

NO. _____, 2005

2005 AUG -1 AM 11:11
DISTRICT OF DELAWARE

ON PETITION FOR A WRIT OF *HABEAS CORPUS*

**APPENDIX TO
PETITIONER'S BRIEF IN SUPPORT OF A PETITION
FOR A WRIT OF *HABEAS CORPUS***

July 10, 2005

JOHN H. BENGE, JR.
SUSSEX CORRECTIONAL
INSTITUTION
P.O. BOX 500
GEORGETOWN, DE 19947

Appendix Table Of Contents

Superior Court Docket Entries	
Sussex County-----	A1
New Castle County-----	A17
Superceding Indictment-----	A18
Pretrial Ruling On “Prior Bad Acts” Evidence-----	A23
Excerpts Of Trial Testimony Transcript-----	A32
Jury Instructions-----	A96
Sentencing Proceeding Transcript-----	A127
Sentence Order-----	A160
Truth In Sentencing SENTAC Guidelines-----	A168
(Excerpts From TIS Benchbook)	
Brief On Direct Appeal-----	A188
Supplemental Memorandum On Direct Appeal-----	A214
Delaware Session Laws-----	A222

SUPERIOR COURT CRIMINAL DOCKET
(as of 01/15/2004)

Page 1

State of Delaware v. JOHN H BENGE
 State's Atty: MELANIE C WITHERS , Esq.
 Defense Atty: JOSEPH A HURLEY , Esq.

AKA: JOHN BENGE
 JOHN BENGE

DOB: 10/22/1948

Assigned Judge:

Charges:

Count	DUC#	Crim.Action#	Description	Dispo.	Dispo. Date
001	0210012355A	IS02100923	PFDCF	TNG	08/27/2003
002	0210012355A	IS02100924	PFDCF	TNG	08/27/2003
003	0210012355A	S02100925	ASSAULT 1ST	NPL	08/27/2003
004	0210012355A	S02100926	ASSAULT W/ SPRA	NPL	08/27/2003
005	0210012355A	IS02100927	OFF TOUCHING	TGLI	08/27/2003
006	0210012355A	IS02100928	CRIM TRES 1ST	TGLI	08/27/2003
007	0210012355A	IS02100929	PFBPP	SEV	07/09/2003
009	0210012355A	S02100930	OFF TOUCHING	NPL	08/27/2003
010	0210012355A	IS03010361	ASSAULT 2ND <6	TGLI	08/27/2003
011	0210012355A	IS03010362	ATT. KIDNAP 1ST	DISM	07/09/2003
012	0210012355A	IS03010363	ATT. KIDNAP 1ST	DISM	07/09/2003
013	0210012355A	IS03010364	PFDCF	DISM	07/09/2003
014	0210012355A	IS03010365	PFDCF	DISM	07/09/2003
015	0210012355A	IS03041012	CRIM CNTMPT DVP	SEV	07/09/2003
017	0210012355A	IS02110168	CR CON PRO ORD	SEV	07/09/2003

No.	Event Date	Event	Judge
1	10/31/2002	CASE ACCEPTED IN SUPERIOR COURT. ARREST DATE: 10/20/2002 PRELIMINARY HEARING DATE: BAIL: CASH BAIL 100,500.00 A NOTE FROM THE COURT OF COMMON PLEAS STATES THAT BOND MAY BE REDUCED TO \$80,500.00 & DEFENDANT MAY BE PLACED ON LEVEL IV HOME CONFINEMENT ELECTRONIC MONITORING.	
2	11/15/2002	MOTION TO AMEND CONDITIONS OF RELEASE FILED BY JOSEPH HURLEY TO BE HEARD 11/22/02 AT 11:00/ FILE AND MOTION SENT TO CHAMBERS	
3	11/21/2002	RE-NOTICE OF MOTION TO AMEND CONDITIONS OF RELEASE FILED BY JOSEPH HURLEY. SCHEDULED TO BE HEARD ON 12/6/02 AT 11:00.	
4	12/06/2002	MOTION TO AMEND CONDITIONS OF RELEASE DENIED.	GRAVES T. HENLEY
7	01/07/2003	DEFENDANT'S LETTER FILED. TO COURT RE: BAIL CONDITIONS	

A-1

SUPERIOR COURT CRIMINAL DOCKET
(as of 01/15/2004)

Page 2

State of Delaware v. JOHN H BENG
 State's Atty: MELANIE C WITHERS , Esq. AKA: JOHN BENG
 Defense Atty: JOSEPH A HURLEY , Esq. JOHN BENG
 DOB: 10/22/1948

No.	Date	Event	Judge
8	01/10/2003	LETTER FROM JUDGE BRADLEY TO DEFENDANT RE: ADVISING DEFENDANT AS HE IS REPRESENTED BY COUNSEL, HIS LETTER DATED 1/5/03, HAS BEEN FORWARDED TO HIS ATTORNEY, MR. HURLEY, FOR ANY ACTION DEEMED APPROPRIATE BY HIM.	BRADLEY E. SCOTT
5	01/13/2003	INDICTMENT, TRUE BILL FILED.	
6	01/13/2003	RULE 9 SUMMONS ISSUED. DEF. TO APPEAR FOR ARRAIGNMENT ON 2/6/03	
9	01/15/2003	LETTER FROM JOSEPH HURLEY TO THE PROTHONOTARY. RE: REQUESTING BAIL INFORMATION SENT BY MAIL ON 1/28/03	
10	02/06/2003	ARRAIGNMENT CALENDAR: RULE 9 SUMMONS RETURNED IN SUPERIOR COURT. CASH BAIL 100,000.00 100% SECURED BAIL-HELD 30,000.00 100% DEFENDANT ARRAIGNED, PLED NOT GUILTY, WAIVED READING OF INDICTMENT, REQUESTED TRIAL BY JURY. CASE REVIEW DATE: 3-3-03 AT 9 AM.	HOWARD ALICIA B.
11	02/19/2003	MOTION TO SUPPRESS EVIDENCE FILED BY JOSEPH A. HURLEY, ESQ.	
12	02/19/2003	LETTER FROM JOSEPH HURLEY, ESQ. TO PROTHONOTARY RE: COPY OF INDICTMENT AND A COPY OF THE AFFIDAVIT OF PROBABLE CAUSE.	
15	02/20/2003	SUMMONS SENT BY SHERIFF RETURNED.	
13	02/21/2003	MEMORANDUM FILED BY JUDGE STOKES. MOTION TO SUPPRESS HAS BEEN REVIEWED BY THE COURT AND APPROVED. HEARING DATE TO BE SCHEDULED BY CASE SCHEDULING.	
14	03/03/2003	CASE REVIEW CALENDAR: SET FOR FINAL CASE REVIEW. 2ND CASE REVIEW: 4/11/03 AND SUPPRESSION HEARING. FCR: 5/7/03 TRIAL: 5/12/03	GRAVES T. HENLEY
16	03/14/2003	SUBPOENA(3) ISSUED.	
17	03/14/2003	SUBPOENA(3) ISSUED.	
18	03/24/2003	CONTINUANCE REQUEST FILED BY THE STATE FOR CONTINUANCE OF 5/12/03 JT.	
19	04/07/2003		

A.2

SUPERIOR COURT CRIMINAL DOCKET
(as of 01/15/2004)

Page 3

State of Delaware v. JOHN H BENG
 State's Atty: MELANIE C WITHERS , Esq. AKA: JOHN BENG
 Defense Atty: JOSEPH A HURLEY , Esq. JOHN BENG

DOB: 10/22/1948

No.	Date	Event	Judge
		LETTER FROM JOE HURLEY, ESQ. TO THE HONORABLE RICHARD F. STOKES RE: MOTION FOR CONTINUANCE OF SUPPRESSION HEARING	
20	04/07/2003	MOTION FOR A CONTINUANCE OF SUPPRESSION HEARING FILED BY JOSEPH HURLEY	
21	04/07/2003	CONTINUANCE REQUEST FILED BY THE STATE FOR CONTINUANCE OF 6/9/03 JT.	
22	04/11/2003	SUPPRESSION HEARING: RESERVED DECISION.	BRADLEY E. SCOTT
23	04/16/2003	LETTER FROM JOE HURLEY, ESQ TO JUDGE BRADLEY RE: REQUEST FOR EXTENSION OF TIME FOR FILING OPENING BRIEF UNTIL 5-5-03 / COPY OF THIS LETTER WAS FAXED INTO CHAMBERS ON 4/15/03 AN WAS APPROVED BY JUDGE BRADLEY ON 4/15/03.	
28	04/17/2003	COPY OF LETTER FROM JOSEPH HURLEY TO MELANIE WITHERS. RE: WITH ATTACHED STIPULATION OF FACT.	BRADLEY E. SCOTT
24	04/24/2003	TRANSCRIPT OF PROCEEDINGS HELD IN SUPERIOR COURT ON 4/11/03 HEARD BY JUDGE BRADLEY FILED BY CHRISTINE QUINN	
3	04/24/2003	LETTER FROM MELANIE WITHERS TO JUDGE BRADLEY RE: REQUESTING COURT TO PERMIT STATE, PRIOR TO TRIAL, TO SUBSTITUTE PIECES OF EVIDENCE WITH XEROX COPIES	
31	04/25/2003	MOTION TO INCORPORATE BY REFERENCE THE AFFIDAVIT OF PROBABLE CAUSE IN SUPPORT OF THE WARRANTS OF ARREST, FILED BY JOSEPH A. HURLEY. MOTION TO BE HEARD ON FRIDAY, MAY 2, 2003 AT 11:00A.M.	
25	04/28/2003	INDICTMENT, TRUE BILL FILED.	
27	04/29/2003	ORDER: IT IS HEREBY ORDERED THAT THE EVIDENCE SHALL BE RETURNED TO THE STATE. JUDGE BRADLEY.	BRADLEY E. SCOTT
29	04/30/2003	CASE CONSOLIDATED WITH: 0210012376 (02-11-0168) DUE TO SUPERSEDING INDICTMENT FILED BY DAG ON 4/28/03. LETTER SENT TO ATTYS AND CASE SCHEDULING NOTIFYING OF CONSOLIDATION. ORIGINAL PAPERWORK FROM ID# 0210012376 IS NOW A PART OF THIS FILE UNDER DOCKET ENTRY #29.	
30	04/30/2003	RULE 9 SUMMONS ISSUED FOR APPEARANCE ON THURSDAY, MAY 22, 2003 AT 9:00AM.	
33	05/01/2003	STATE'S RECIPROCAL DISCOVERY REQUEST FILED BY MELANIE WITHERS.	

A.3

SUPERIOR COURT CRIMINAL DOCKET
(as of 01/15/2004)

Page 4

tate of Delaware v. JOHN H BENG
State's Atty: MELANIE C WITHERS , Esq. AKA: JOHN BENG
Defense Atty: JOSEPH A HURLEY , Esq. JOHN BENG

DOB: 10/22/1948

No.	Event Date	Event	Judge
32	05/02/2003	MOTION TO INCORPORATE BY REFERENCE THE AFFIDAVIT OF PROBABLE CAUSE IN SUPPORT OF THE WARRANTS OF A ARREST GRANTED.	BRADLEY E. SCOTT
45	05/14/2003	SUMMONS SERVED BY SHERIFF.	
34	05/15/2003	MOTION FOR RELIEF FROM PREJUDICIAL JOINDER FILED BY JOE HURLEY.	
35	05/15/2003	MOTION IN LIMINE FILED BY JOE HURLEY.	
36	05/15/2003	LETTER FROM JOE HURLEY TO JUDGE BRADLEY RE: ENCLOSING A MOTION IN LIMINE AND A MOTION FOR RELIEF FROM PREJUDICIAL JOINDER.	
37	05/19/2003	LETTER FROM COURT TO MELANIE WITHER AND JOSEPH HURLEY, ESQ. RE: CONFIRMATION THAT AN OFFICE CONFERENCE HAS BEEN SCHEDULED FOR FRIDAY, MAY 23, 2003 AT 11:30A.M.	BRADLEY E. SCOTT
38	05/19/2003	LETTER(ORIGINAL) FROM JOSEPH HURLEY, ESQ. TO COURT RE: REQUESTING MORE TIME TO FILE OPENING BRIEF. APPROVED BY JUDGE BRADLEY ON MAY 16, 2003 (FAXED IN DATE)	
39	05/21/2003	ARRAIGNMENT CALENDAR: RULE 9 SUMMONS RETURNED IN SUPERIOR COURT. CASH BAIL 100,000.00 100% SECURED BAIL-HELD 35,000.00 DEFENDANT ARRAIGNED, PLED NOT GUILTY, WAIVED READING OF INDICTMENT, REQUESTED TRIAL BY JURY. CASE REVIEW DATE: 7-9-03 AT 9 A.M. TRIAL DATE: 7-14-03 AT 9 A.M.	HOWARD ALICIA B.
40	05/21/2003	LETTER FROM JOSEPH HURLEY TO JUDGE BRADLEY RE: ENCLOSING DEF'S OPENING MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION TO SUPPRESS EVIDENCE	
41	05/21/2003	DEFENDANT'S OPENING MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS FILED BY JOSEPH HURLEY	
42	05/23/2003	RUL 12.2 NOTICE OF INTENTION TO INTRODUCE EXPERT EVIDENCE OF DEFENDANT'S MENTAL CONDITION FILED BY JOSEPH HURLEY.	
43	05/23/2003	LETTER FROM JOSEPH HURLEY TO JUDGE BRADLEY RE: ADVISING THERE ARE TWO MOTION PENDING FOR DISCUSSION. HE HAS LOCATED A CASE WHICH SEEMS TO BE THE "DEAL-BREAKER" WITH REGARD TO THE MOTION REGARDING EXTREME	

A-4

SUPERIOR COURT CRIMINAL DOCKET
(as of 01/15/2004)

Page 3

State of Delaware v. JOHN H BENGE DOB: 10/22/1948
 State's Atty: MELANIE C WITHERS , Esq. AKA: JOHN BENGE
 Defense Atty: JOSEPH A HURLEY , Esq. JOHN BENGE

No.	Event Date	Event	Judge
		EMOTIONAL DISTRELL. HE WOULD LIKE MS. WITHERS TO REVIEW THE CASE WITH THE HOPE THAT SHE IS IN AGREEMENT THAT EXTREME EMOTIONAL DISTRESS IS IS A PROPER DEFENSE, ASSUMING A FOUNDATION CAN BE MADE FROM A PSYCHIATRIC EXPERT, IN AN ATTEMPTED MURDER CASE.	
44	05/23/2003	OFFICE CONFERENCE PROCEEDING HELD. RESPONSE FROM STATE DUE 6/6/03. HURLEY'S RESPONSE TO STATE'S IS DUE JUNE 9, 2003. THE DEFENSE OF EXTREME EMOTIONAL DISTRESS IS APPLICABLE DEPENDING UPON FACTUAL BASIS BEING ESTABLISHED BY HURLEY. AS TO THE MOTION TO SUPPRESS - DECISION RESERVED. AS TO MOTION TO SEVER - DECISION RESERVED. CR-QUINN. CC-MONTAGUE.	BRADLEY E. SCOTT
46	06/04/2003	LETTER FROM MELANIE WITHERS, DAG TO JUDGE BRADLEY RE: STATE'S ANSWERING LETTER MEMORANDUM REGARDING THE DEFENDANT'S MOTION TO SUPPRESS.	BRADLEY E. SCOTT
47	06/10/2003	DEFENDANT'S REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SUPPRESS FILED BY JOSEPH HURLEY, ESQ.	
3	06/11/2003	SUBPOENA (4) NEW CASTLE	
49	06/11/2003	SUBPOENA (2) SUSSEX COUNTY	
50	06/11/2003	SUBPOENA (12) SUSSEX COUNTY	
51	06/11/2003	LETTER FROM MELANIE WITHERS TO JOE HURLEY RE: LIST OF POTENTIAL 404B EVIDENCE WHICH MIGHT ARISE DURING TRIAL.	
52	06/12/2003	LETTER FROM JOSEPH HURLEY TO JUDGE BRADLEY RE: REQUESTING MS. WITHERS RETRIEVE THE FINAL PAGE OF HER SUBMISSION OUTLINING PURPORTED BAD ACTS AND REDACT THAT PAGE	
53	06/12/2003	LETTER FROM JOSEPH HURLEY TO JUDGE BRADLEY RE: RESPONSE TO STATE'S RESPONSE TO HIS MOTION TO SEVER COUNTS OF THE INDICTMENT	
55	06/26/2003	MEMORANDUM OPINION: IN SUMMARY, BENGE'S MOTION TO SUPPRESS THE CONTENTS OF THE BAG IS GRANTED BECAUSE THE SEARCH EXCEEDED THE PROPER BOUNDS FOR A WARRANTLESS SEARCH AND THE MOTION TO SUPPRESS THE DOCUMENTS DISCOVERED IN THE HOUSE IS DENIED BECAUSE THE EVIDENCE WAS GATHERED BY A PRIVATE, NON-GOVERNMENTAL PARTY.	BRADLEY E. SCOTT

A.5

SUPERIOR COURT CRIMINAL DOCKET
(as of 01/15/2004)

Page 6

State of Delaware v. JOHN H BENGE
 State's Atty: MELANIE C WITHERS , Esq.
 Defense Atty: JOSEPH A HURLEY , Esq.

AKA: JOHN BENGE
 JOHN BENGE

DCB: 10/22/1948

No.	Event Date	Event	Judge
54	06/27/2003	LETTER FROM JOSEPH HURLEY, ESQ. TO JUDGE BRADLEY RE: TO REQUEST A TELEPHONE CONFERENCE WITH THE COURT.	BRADLEY E. SCOTT
56	07/02/2003	MOTION IN LIMINE TO EXCLUDE EVIDENCE, FILED BY JOSEPH HURLEY, ESQ. TO BE PRESENTED AT TRIAL.	
57	07/08/2003	LETTER FROM JOSEPH HURLEY, ESQUIRE TO JUDGE BRADLEY. RE: JOHN BRADY WILL STAND IN TO NOTIFY COURT THAT THE PLEA OFFER WILL BE REJECTED.	BRADLEY E. SCOTT
58	07/08/2003	LETTER FROM JOSEPH HURLEY TO JUDGE BRADLEY. RE: SUBSTANCE OF CASE	BRADLEY E. SCOTT
114	07/08/2003	LESSER INCLUDED OFFENSE CASES FROM JOSEPH HURLEY	
59	07/09/2003	HEARING HELD IN OPEN COURT ON VARIOUS MOTIONS: CR-QUINN. CC-MONTAGUE JUDGE DENIES MOTION FOR RECUSAL. JUDGE GRANTS MOTION TO DIMISS COUNTS 7 THRU 10 (S03-01-0362 - 0365). STATE TO FILE AMENDED INDICTMENT OMITTING S03-01-0362 - 0365. JUDGE GRANTS MOTION TO EXCLUDE LETTER FROM BEING ADMITTED AS EVIDENCE. JUDGE GRANTS MOTION TO SEVER COUNTS 6 (02-10-0929), 11 (S02-11-0168) AND 12 (03-04-1012). MOTION TO EXCLUDE EXPERT TESTIMONY REGARDING HOW MANY SHOTS FIRED IS GRANTED. STATE MOTION TO QUASH SUBPOENA (DR. SMITH RECORDS) IS DENIED. JUDGE BRADLEY ORDERS THE STATE TO PRODUCE A COPY OF THE RECORDS FROM DR. SMITH TO MR. HURLEY. STATE ASKS FOR ITEMS REQUESTED FROM SUPPRESSION HEARING LISTED IN DOCKET ENTRY # 26. JUDGE HAD PREVIOUSLY GRANTED THAT REQUEST ON 4/29/03. CLERK TO SUBSTITUTE PHOTOCOPIES OF THOSE ITEMS AND GIVE STATE THE ORIGINALS. ARGUMENTS ON 404B /GETZ MATTERS ARGUED. STATE TO PUT IN WRITING TO MR. HURLEY BY NOON ON FRIDAY. THOSE MATTERS WILL BE DISCUSSED PRIOR TO TRIAL. MR. HURLEY REQUESTS THAT THE VOIR DIRE BE TYPED AND PASSED OUT TO THE JURY SO THAT THEY WILL HAVE IT WHILE THE VOIR DIRE IS BEING READ TO THEM. THE JUDGE GRANTS AND MR. HURLEY WILL PROVIDE THE COPIES FOR THE JURY.	BRADLEY E. SCOTT
60	07/09/2003	FINAL CASE REVIEW: NO PLEA/SET FOR TRIAL CR-QUINN.	BRADLEY E. SCOTT
61	07/09/2003	MEMORANDUM FILED. SENT TO COURT, CSO, AND ATTORNEYS RE: SEVERANCE OF CHARGES. BOND IS NOW AS FOLLOWS: AS TO S0210012355A-BOND IS \$100,000.00 CASH PLUS \$23,000.00 SECURED. AS TO S0210012355B-BOND IS \$12,000.00	

A6

SUPERIOR COURT CRIMINAL DOCKET
(as of 01/15/2004)

Page 7

State of Delaware v. JOHN H BENG
 State's Atty: MELANIE C WITHERS , Esq. AKA: JOHN BENG
 Defense Atty: JOSEPH A HURLEY , Esq. JOHN BENG

DOB: 10/22/1943

No.	Date	Event	Judge
		SECURED.	
62	07/09/2003	LETTER FROM JOE HURLEY, ESQ TO JUDGE BRADLEY RE: "CHRISTMAS WISH LIST" OF THINGS HE WISHES TO HAVE DISCUSSED ON MONDAY. ALSO ATTACHED IS VOIRDIRE QUESTIONS.	
63	07/09/2003	MOTION TO DISMISS FILED BY JOE HURLEY, ESQ.	
64	07/09/2003	MOTION TO EXCLUDE PROFFERED EXPERT TESTIMONEY FILED BY JOE HURLEY, ESQ	
71	07/10/2003	LETTER FROM MELANIE WITHERS TO JUDGE BRADLEY RE: STATE'S MOTION ASKING THE COURT TO RECONSIDER ITS RULING AND TO PERHAPS SUPPLEMENT THE RECORD AS TO THE REASONS FOR THE RULING REGARDING THE DEFENDANT'S MOTION TO EXCLUDE CERTAIN TESTIMONY.	
65	07/11/2003	LETTER FROM JOSEPH HURLEY TO MELANIE WITHERS, DAG	
66	07/11/2003	RE: COPY OF THE LETTER IN REFERENCE TO THE VOIR DIRE QUESTIONS OFFICE CONFERENCE PROCEEDING HELD. JOSEPH HURLEY, ESQ. (VIA TELEPHONE), MELANIE WITHERS, ESQ. CC-WILLIAMS CR-WASHINGTON DEFENSE REFERS TO TWO LETTERS AND THE DEFENDANT REVIEWING EVIDENCE STATE REFERS TO SEARCH WARRANT AND TAPES JUDGE ORDERS COUNSEL TO GET TOGETHER TO REVIEW OR EXCHANGE TAPES TO BE REVIEWED PRIOR TO TRIAL.	BRADLEY E. SCOTT
72	07/11/2003	LETTER FROM MELANIE C. WITHERS TO JUDGE BRADLEY AND JOSEPH A. HURLEY RE: SUMMARY OF POTENTIAL 404(B) INFORMATION WHICH SHE HOPES WILL BE ADDRESSED FURTHER DURING THE ANTICIPATED HEARING ON MONDAY.	
73	07/11/2003	LETTER FROM MELANIE WITHERS TO JUDGE BRADLEY RE: PHONE CONFERENCE	
67	07/14/2003	DEFENDANT'S RESPONSE TO LETTER/MOTION OFFERED BY THE STATE, FILED BY JOSEPH HURLEY. ALSO MOTION FOR CRIMINAL HISTORY.	
68	07/14/2003	MOTION FOR CRIMINAL HISTORY IS DENIED BY JUDGE BRADLEY IN OPEN COURT.	BRADLEY E. SCOTT
69	07/14/2003	TRIAL CALENDAR-JURY TRIAL-CONTINUED COURT'S REQUEST-LACK OF JURORS. JURY PANEL ISSUES RAISED BY DEFENSE COUNSEL, JOE HURLEY, IN CHAMBERS. CR-PURNELL.	BRADLEY E. SCOTT
70	07/14/2003		

A7

SUPERIOR COURT CRIMINAL DOCKET
(as of 01/15/2004)

Page 8

State of Delaware v. JOHN H BENGGE DOB: 10/22/1948
 State's Atty: MELANIE C WITHERS , Esq. AKA: JOHN BENGGE
 Defense Atty: JOSEPH A HURLEY , Esq. JOHN BENGGE

No.	Date	Event	Judge
		MOTION TO REQUIRE PRODUCTION OF CRIMINAL HISTORIES OF PROSPECTIVE JURORS TO BE HEARD ON MONDAY, JULY 14, 2003, AT 9:00 A.M._/ MOTION WAS RULED ON IN OPEN COURT ON MONDAY.	
74	07/14/2003	LETTER FROM JOSEPH HURLEY, ESQ. TO COURT RE: RECENT LETTER FILED TO BE PLACED UNDER SEAL.	
75	07/14/2003	LETTER FROM JOSEPH HURLEY, ESQ. TO COURT RE: EVIDENCE.	
76	07/14/2003	LETTER FROM JOSEPH HURLEY, ESQ. TO COURT RE: EVIDENCE.	
77	07/15/2003	DOCUMENTS FILED, SEALED BY ORDER OF JUDGE CONTAINS DEFENDANT'S LETTER TO WIFE REGARDING DIVORCE STIPULATIONS DATED : JANUARY (UNSURE OF DATE) TO BE OPENED BY A SUPERIOR JUDGE ONLY.	
78	07/22/2003	MOTION FOR REVIEW OF BOND FILED BY MELANIE WITHERS, DAG. MOTIONED FOR FRIDAY, JULY 25, 2003 AT 11:00A.M.	
79	07/22/2003	LETTER FROM MELANIE WITHERS TO COURT RE: ADVISING THE STATE HAS FILED A MOTION TO REVIEW BOND AND REQUESTING THE BOND BE REVOKED UNTIL THE DAY OF THE MOTION.	
80	07/22/2003	LETTER FROM COURT TO MELANIE WITHERS, DAG AND JOSEPH HURLEY, ESQ. RE: ADVISING THE BAIL HAS BEEN REVOKED AND THE MOTION IS SCHEDULED FOR FRIDAY, JULY 25, 2003 AT 11:00A.M.	BRADLEY E. SCOTT
81	07/23/2003	LETTER FROM JOSEPH HURLEY TO JOYCE COLLINS. RE: INQUIRIES AS TO BAIL	BRADLEY E. SCOTT
82	07/23/2003	LETTER FROM JOSEPH HURLEY TO JUDGE BRADLEY. RE: RESPONSE TO STATE'S REQUEST TO REVOKE BAIL UNTIL MOTION IS HEARD.	BRADLEY E. SCOTT
83	07/23/2003	DEFENDANT'S RESPONSE TO STATE'S MOTION SEEKING TO REVIEW BOND FILED BY JOSEPH HURLEY.	
85	07/23/2003	LETTER FROM JOSEPH HURLEY, ESQ. TO COURT RE: RESCHEDULING.	
84	07/25/2003	OFFICE CONFERENCE/TELECONFERENCE PROCEEDINGS HELD. DEF. ATTY. JOSEPH HURLEY, ESQ./DAG MELANIE WITHERS/CC WILLIAMS CR WASHINGTON/ CASE SCHEDULING TAMMY KEARNEY RE: POSSIBLE SCHEDULING DATES:	BRADLEY E. SCOTT

A.8

SUPERIOR COURT CRIMINAL DOCKET
(as of 01/15/2004)

Page 9

State of Delaware v. JOHN H BENGE
 State's Atty: MELANIE C WITHERS , Esq.
 Defense Atty: JOSEPH A HURLEY , Esq.

AKA: JOHN BENGE
 JOHN BENGE

DOB: 10/22/1948

No.	Event Date	Event	Judge
	7/28		
	8/4		
	8/18		
	10/06		
	10/13		
	STATE IS TO CONTACT WITNESSES TO SEE IF SOONER DATES ARE AVAILABLE.		
86	07/25/2003	LETTER FROM MELANIE WITHERS TO COURT RE: ATTEMPT TO CONTACT WITNESSES.	
87	07/25/2003	ORDER OF BOND	BRADLEY E. SCOTT
88	07/25/2003	LETTER FROM MELANIE WITHERS TO JUDGE BRADLEY RE: TRIAL DATE	
96	07/31/2003	SUBPOENA(S) ISSUED.	
97	07/31/2003	SUBPOENA(S) ISSUED.	
89	08/01/2003	LETTER FROM JOSEPH A. HURLEY TO HON. E. SCOTT BRADLEY RE: CONFIRMING THAT THE TRIAL WILL COMMENCE ON MONDAY AUGUST 18 AND ADDRESSES PREVIOUS ISSUES THAT AROSE DURING THE PREVIOUS JURY SELECTION.	
92	08/01/2003	LETTER FROM JOE HURLEY TO JUDGE BRADLEY RE: ADVISING HE HAS A TRIAL SCHEDULED IN NEW CASTLE SUPERIOR COURT AT THE SAME TIME AS THE BENGE TRIAL WAS RESCHEDULED. HE ASKS THAT THE JUDGE COMMUNICATE WITH JUDGE HERLIHY SO THAT HE WILL UNDERSTAND THE PRIORITIZATIO OF THE BENGE MATTER. TRIAL SCHEDULED IN NEW CASTLE IS STATE VS. Nanci JONES. MR. HURLEY HAS REQUESTED A CONTINUANCE IN THAT CASE.	
93	08/01/2003	LETTER FROM JOE HURLEY TO JUDGE BRADLEY RE: ADVISING HE HAS A TRIAL SCHEDULED IN NEW CASTLE SUPERIOR COURT AT THE SAME TIME AS THE BENGE CASE HAS BEEN RESCHEDULED. HE HAS ASKED FOR A CONTINUANCE , BUT HE ASKS THE JUDGE COMMUNICATE WITH JUDGE HERLIHY SO HE WILL UNDER THE PRIORITIZATION OF THE BENGE MATTER. THE TRIAL IN NEW CASTLE IS THE STATE OF DEL. VS. DANIELLE C. DAVIS.	
90	08/05/2003	LETTER FROM MELANIE WITHERS, DAG TO THE HON. E. SCOTT BRADLEY RE: ADVISING THE COURT OF THE CONCERNS THAT KEITH BANKS, THE CHIEF OF POLICE HAS WITH THE TRIAL DATE.	
91	08/05/2003	LETTER FROM MELANIE WITHERS, DAG TO THE HON. E. SCOTT BRADLEY RE: THE STATE'S CONCERNS WITH PARAGRAPH #1 OF MR. HURLEY'S JULY 30	

A.9

SUPERIOR COURT CRIMINAL DOCKET
(as of 01/15/2004)

Page 10

State of Delaware v. JOHN H BENG
 State's Atty: MELANIE C WITHERS , Esq. AKA: JOHN BENG
 Defense Atty: JOSEPH A HURLEY , Esq. JOHN BENG

DOB: 10/22/1948

No.	Event Date	Event	Judge
94	08/07/2003	LETTER TO THE COURT LETTER FROM JUDGE BRADLEY TO MELANIE C. WITHERS AND JOSEPH A. HURLEY RE: IN RESPONSE TO THEIR MOST RECENT LETTERS. THE JUDGE WILL CONSIDER THE STATE'S MOTION TO RECONSIDER HIS DECISION REGARDING OFFICER PARSONS' PROPOSED EXPERT TESTIMONY ON THE DAY OF TRIAL. HE DOES NOT EXPECT THE OVER REPRESENTATION OF TEACHERS ON THE JURY PANEL TO BE A PROBLEM THIS TIME. HE IS GOING TO FOLLOW THE TRIAL SCHEDULE THAT WS IN EFFECT FOR THE LAST TRIAL AND WILL TRY TO ADJUST THE TRIAL SCHEDULE SO THAT OFFICER PARSONS CAN TAKE HIS PROMOTIONAL TESTS. HE HAS ALSO CONTACTED JUDGES HERILHY AND GEBELEIN AGOUT MR. HURLEY'S CONFLICTING TRIAL OBLIGATIONS.	BRADLEY E. SCOTT
95	08/11/2003	LETTER FROM JOSEPH HURLEY, ESQ. TO JUDGE BRADLEY RE: THE RULING CONTINUES IN EFFECT	
98	08/18/2003	OFFICE CONFERENCE PROCEEDING HELD. DEF. ATTY./HURLEY DAG/ WITHERS CR/ PURNELL CC/WILLIAMS RE: JUDGE ADDRESSES ATTORNEYS AS TO ANYTHING NEW TO BE DISCUSSED PRIOR TO THE BEGINNING OF THE TRIAL.	BRADLEY E. SCOTT
99	08/18/2003	JURY SELECTED.	BRADLEY E. SCOTT
100	08/18/2003	TRIAL CALENDAR- WENT TO TRIAL JURY CR/PURNELL CC/WILLIAMS COURT BEGAN: 1:24PM STATE ADDRESSES THEIR MOTION FOR RECONSIDERATION. DEFENSE ARGUES RESPONSE JUDGE BRADLEY STICKS WITH ORIGINAL RULING. COURT IN RECESS: 2:35PM	BRADLEY E. SCOTT
101	08/19/2003	OFFICE CONFERENCE PROCEEDING HELD. DEF ATTY/ HURLEY DAG/ WITHERS CR/ KIMMEL CC/ WILLIAMS RE: JURY INSTRUCTIONS/WITNESS TESTIMONY. DEFENSE REQUEST SEQUESTRATION ORDER ON COURT SPECTATORS. STATE HAS NO OBJECTION.	BRADLEY E. SCOTT
102	08/19/2003	TRIAL CALENDAR- WENT TO TRIAL JURY 9:37AM COURT BEGAN CC/WILLIAMS CR/KIMMEL 4:35PM COURT IN RECESS	BRADLEY E. SCOTT
103	08/20/2003		BRADLEY E. SCOTT

A. 10

SUPERIOR COURT CRIMINAL DOCKET
(as of 01/15/2004)

Page 11

State of Delaware v. JOHN H BENGE
 State's Atty: MELANIE C WITHERS , Esq.
 Defense Atty: JOSEPH A HURLEY , Esq.

AKA: JOHN BENGE
 JOHN BENGE

DOB: 10/22/1948

No.	Event Date	Event	Judge
		OFFICE CONFERENCE PROCEEDING HELD. DEF. ATTY./ HURLEY DAG/ WITHERS CC/ WILLIAMS CR/WASHINGTON RE: VOIR DIRE EACH JUROR AS TO SEEING THE WITNESS LEAVING THE COURT- ROOM. JUDGE BRADLEY WILL PURSUE IT.	
104	08/20/2003	TRIAL CALENDAR- WENT TO TRIAL JURY CR/WASHINGTON CC/WILLIAMS 1:26PM COURT BEGAN JURORS VOIR DIRED INDIVIDUALLY IN CHAMBERS. 5:12PM COURT IN RECESS	BRADLEY E. SCOTT
105	08/21/2003	OFFICE CONFERENCE PROCEEDING HELD. DEF ATTY./ HURLEY DAG/ WITHERS CR/ PURNELL CC/ WILLIAMS RE: FOUNDATION FOR OFFICER'S TESTIMONY AT THE SCENE.	BRADLEY E. SCOTT
106	08/21/2003	TRIAL CALENDAR- WENT TO TRIAL JURY 9:39AM COURT BEGAN 5:00PM COURT IN RECESS	BRADLEY E. SCOTT
107	08/25/2003	TRANSCRIPT OF EXCERPT OF PROCEEDINGS ON TUESDAY, AUGUST 19, 2003, FILED BY EILEEN G. KIMMEL.	
108	08/25/2003	OFFICE CONFERENCE PROCEEDING HELD. CR-QUINN. CC-MONTAGUE. RE: CASSETTE TAPES, READING PORTION OF TRANSCRIPT AND POSSIBLY VOIR DIRING A JUROR.	BRADLEY E. SCOTT
109	08/25/2003	TRIAL CALENDAR- WENT TO TRIAL JURY CR-QUINN. CC-MONTAGUE. MR. HURLEY MAKES AN APPLICATION TO DISMISS ALL COUNTS DUE TO THE STATE FAILING TO PROVIDE A PRIMA FACIA CASE. APPLICATION IS DENIED.	BRADLEY E. SCOTT
110	08/26/2003	OFFICE CONFERENCE PROCEEDING HELD. CR-WASHINGTON. CC-MONTAGUE. DISCUSSED PACKET (REGARDING DONNA BENGE SEPARATION AGREEMENT) THAT THE STATE INTENDS TO INTRODUCE AS EVIDENCE; DISCUSSED STIPULATION MR. HURLEY PLANSS TO INTRODUCE; MARKED THREE COURT EXHIBITS.	BRADLEY E. SCOTT
111	08/26/2003	OFFICE CONFERENCE PROCEEDING HELD. CR-WASHINGTON. CC- MONTAGUE DISCUSSED PROSECUTERS STATING THEIR OPINIONS TO THE JURY AND THE DEF.	BRADLEY E. SCOTT

A-11

SUPERIOR COURT CRIMINAL DOCKET
(as of 01/15/2004)

Page 12

State of Delaware v. JOHN H BENG
 State's Atty: MELANIE C WITHERS , Esq.
 Defense Atty: JOSEPH A HURLEY , Esq.

AKA: JOHN BENG
 JOHN BENG

DOB: 10/22/1948

No.	Date	Event	Judge
		WAIVING HIS 5TH AMENDMENT RIGHTS REGARDING PENDING NEW CASTLE COUNTY CHARGES.	
112	08/26/2003	OFFICE CONFERENCE PROCEEDING HELD. CR-WASHINGTON. CC-MONTAGUE. RE: TESTIMONY AND LIO'S	BRADLEY E. SCOTT
113	08/26/2003	TRIAL CALENDAR- WENT TO TRIAL JURY CR-WASHINGTON. CC-MONTAGUE. JUDGE BRADLEY PUTS ON THE RECORD THAT THE DEFENDANT WAIVED HIS 5TH AMENDMENT RIGHT REGARDING PENDING NEW CASTLE COUNTY CHARGES.	BRADLEY E. SCOTT
115	08/27/2003	LETTER FROM JOSEPH A. HURLEY TO JUDGE BRADLEY RE: ADVISING OF THE LESSER INCLUDED OFFENSES HE IS SEEKING.	
116	08/27/2003	JURY TRIAL - DEFENDANT FOUND GUILTY/PSI ORDERED. SENTENCING SET FOR OCTOBER 10, 2003, AT 11:00 A.M. CR-KIMMEL. CC-MONTAGUE.	BRADLEY E. SCOTT
117	08/27/2003	CHARGE TO THE JURY	
18	08/27/2003	COMMITMENT TO DEPARTMENT OF CORRECTION.	
120	09/12/2003	LETTER FROM JUDGE GRAVES TO EILEEN KIMMEL. RE: ASKING THAT EXPEDITED REQUEST BE CONSIDERED.	GRAVES T. HENLEY
119	09/15/2003	TRANSCRIPT OF PROCEEDING (VOLUME E) ON MONDAY, AUGUST 25, 2003, FILED BY CHRISTINE L. QUINN.	
121	10/08/2003	LETTER FROM MELANIE WITHERS TO JUDGE BRADLEY. RE: VICTIMS WISH TO SPEAK AT SENTENCING.	BRADLEY E. SCOTT
123	10/09/2003	LETTER FROM JOSEPH HURLEY, ESQ. TO COURT RE: REQUESTING THAT HIS SENTENCING BE FIRST ON THE CALENDAR.	
122	10/10/2003	SENTENCING CALENDAR: DEFENDANT SENTENCED. CR-KIMMEL	BRADLEY E. SCOTT
124	11/13/2003	LETTER FROM SUPREME COURT TO JOSEPH HURLEY, ESQ RE: COURT REQUEST A WRITTEN STATEMENT ON OR BEFORE 11-20-03.	
125	11/13/2003	NOTICE OF APPEAL FILED BY DEFENDANT. SUPREME COURT # 544,2003	

A 12

SUPERIOR COURT CRIMINAL DOCKET
(as of 01/15/2004)

Page 13

State of Delaware v. JOHN H BENG
State's Atty: MELANIE C WITHERS , Esq. AKA: JOHN BENG
Defense Atty: JOSEPH A HURLEY , Esq. JOHN BENG
DOB: 10/22/1948

No.	Event Date	Event	Judge
126	11/26/2003	LETTER FROM DEBORAH L. WEBB TO EILEEN KIMMEL, COURT REPORTER RE: AVISING THE COURT REPORTER THAT THE FINAL TRANSCRIPT MUST BE FILED WITH THE PROTHONOTARY'S OFFICE NO LATER THAN 12/30/03.	
127	12/30/2003	LETTER FROM LISA SEMANS(SUPREME COURT) TO COURT RE: ADVISING THE REQUEST FOR AN EXTENSION OF TIME TO FILE THE TRANSCRIPT IS GRANTED.	

*** END OF DOCKET LISTING AS OF 01/15/2004 ***
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A. 13

SUPERIOR COURT CRIMINAL DOCKET
(as of 01/15/2004)

Page 1

State of Delaware v. JOHN H BENGE
State's Atty: MELANIE C WITHERS , Esq.
Defense Atty: JOSEPH A HURLEY , Esq.

AKA: JOHN BENGE
JOHN BENGE

DOB: 10/22/1948

Assigned Judge:

Charges:

Count	DUC#	Crim.Action#	Description	Dispo.	Dispo. Date
001	0210012355B	IS02100929	PFBPP		
002	0210012355B	IS03041012	CRIM CNTMPT DVP		
003	0210012355B	IS02110168	CR CON PRO ORD		

No.	Event Date	Event	Judge
1	10/31/2002	CASE ACCEPTED IN SUPERIOR COURT. ARREST DATE: 10/20/2002 PRELIMINARY HEARING DATE: BAIL: SECURED BAIL-HELD	12,000.00
2	01/13/2003	INDICTMENT, TRUE BILL FILED.	
	04/28/2003	SUPERCEDING INDICTMENT FILED	
4	04/30/2003	RULE 9 SUMMONS ISSUED ON 03-04-1012	
5	05/21/2003	ARRAIGNMENT CALENDAR: RULE 9 SUMMONS RETURNED. CASH BAIL 11,000.00 SECURED BAIL-HELD 1,000.00 DEFENDANT ARRAIGNED, PLED NOT GUILTY, WAIVED READING OF INDICTMENT, REQUESTED TRIAL BY JURY. CASE REVIEW DATE: 7/9/03.	HOWARD ALICIA B.
6	07/09/2003	HEARING ON VARIOUS MOTIONS HEARD. DURING THE HEARING A MOTION TO SEVER CHARGES WAS GRANTED. S02-10-0929, S02-11-0168 AND S03-04-1012 ARE NOW SEVERED FROM THE MAIN FILE. S02-10-0929, S02-11-0168 AND S03-04-1012 ARE NOW UNDER ID # 0210012355B. MEMO SENT TO ATTORNEYS AND CASE SCHEDULING NOTIFYING THEM OF THE SEVERANCE.	BRADLEY E. SCOTT
7	07/09/2003	MEMORANDUM FILED. TO COURT, ATTORNEYS AND CSO RE: NOTIFYING THEM OF THE SEVERANCE. DUE TO SEVERANCE, BOND IS AS FOLLOWS: AS TO 0210012355A - \$100,000.00 CASH PLUS \$23,000.00 SECURED. AS TO S0210012355B - \$12,000.00 CASH.	
8	07/22/2003		

A-14

SUPERIOR COURT CRIMINAL DOCKET
(as of 01/15/2004)

Page 2

State of Delaware v. JOHN H BENG
 State's Atty: MELANIE C WITHERS , Esq.
 Defense Atty: JOSEPH A HURLEY , Esq.

AKA: JOHN BENG
 JOHN BENG

DOB: 10/22/1948

No.	Date	Event	Judge
		MOTION FOR REVIEW OF BOND FILED BY MELANIE WITHERS, DAG. MOTION TO BE HEARD ON FRIDAY, JULY 25, 2003 AT 11:00A.M.	
9	07/22/2003	LETTER FROM MELANIE WITHERS TO COURT RE: ADVISING THE STATE HAS FILED A MOTION TO REVIEW BOND, REQUESTING BOND BE REVOKED UNTIL THE DAY OF THE MOTION.	
10	07/22/2003	LETTER FROM COURT TO MELANIE WITHERS AND JOSEPH HURLEY, ESQ. RE: ADVISING THE BOND HAS BEEN REVOKED, AND THE MOTION IS SCHEDULED FOR FRIDAY, JULY 25, 2003 AT 11:00A.M.	BRADLEY E. SCOTT
12	07/22/2003	DEFENDANT'S RESPONSE TO THE STATE'S MOTION SEEKING TO REVIEW BOND.	
13	07/22/2003	LETTER FROM JOSEPH HURLEY TO COURT RE: OPPOSING THE REQUEST THAT THE DEFENDANT BE HELD W/O BAIL.	
14	07/23/2003	LETTER FROM JOSEPH HURLEY, ESQ. TO COURT RE: ADVISING HE WILL NOT BE PRESENT ON FRIDAY, JULY 25, 2003.	
5	07/23/2003	LETTER FROM JOSEPH HURLEY, ESQ. TO COURT RE: RESCHEDULING.	
11	07/25/2003	OFFICE CONFERENCE/TELECONFERENCE PROCEEDINGS HELD. DEF.ATTY. JOSEPH HURLEY, ESQ./DAG. MELANIE WITHERS/CC WILLIAMS CR WASHINGTON/ CASE SCHEDULING TAMMY KEARNEY RE: POSSIBLE SCHEDULING DATES: 7/28 8/4 8/18 10/6 10/13 STATE IS TO CONTACT WITNESSES TO SEE IF SOONER DATES ARE AVAILABLE.	BRADLEY E. SCOTT
16	07/25/2003	LETTER FROM MELANIE WITHERS TO COURT RE: ATTEMPT TO CONTACT WITNESSES.	
17	07/25/2003	ORDER OF BOND	BRADLEY E. SCOTT
18	09/12/2003	LETTER FROM JUDGE GRAVES TO EILEEN KIMMEL. RE: ASKING THAT EXPEDITED REQUEST FOR TRANSCRIPT BE CONSIDERED.	GRAVES T. HENLEY
19	10/07/2003	LETTER FROM JOE HURLEY, ESQ TO JUDGE BRADLEY RE: OPPOSITION TO THE REQUEST OF THE AG'S OFFICE FOR A CONTINUANCE OF THE TRIAL.	
20	10/07/2003		BRADLEY E. SCOTT

A. 15

SUPERIOR COURT CRIMINAL DOCKET
(as of 01/15/2004)

Page 3

State of Delaware v. JOHN H BENG
 State's Atty: MELANIE C WITHERS , Esq.
 Defense Atty: JOSEPH A HURLEY , Esq.

AKA: JOHN BENG
 JOHN BENG

DOB: 10/22/1948

No.	Event Date	Event	Judge
		LETTER FROM COURT TO MELANIE C. WITHERS AND JOSEPH A. HURLEY RE: CONFIRMING THAT AN OFFICE CONFERENCE HAS BEEN SCHEDULED WITH JUDGE BRADLEY ON FRIDAY, OCTOBER 10, 2003, IMMEDIATELY FOLLOWING THE 11:00 AM SENTENCING TO DISCUSS THE REQUEST FOR CONTINUANCE OF THE TRIAL SCHEDULED TO BEGIN ON NOVEMBER 10, 2003.	
21	10/10/2003	MOTION FOR CONTINUANCE GRANTED. STATES REQUESTS CONTINUANCE DUE TO OFFICER UNAVAILABILITY. F.C.R. - 1/7/04. TRIAL - 1/20/04. CR-KIMMEL.	BRADLEY E. SCOTT
22	01/06/2004	SUBPOENA(4) ISSUED.	
23	01/06/2004	SUBPOENA(1) ISSUED.	
24	01/06/2004	SUBPOENA(2) ISSUED.	
25	01/07/2004	FINAL CASE REVIEW: NO PLEA/SET FOR TRIAL MR. BRADY APPEARED ON BEHALF ON MR. HURLEY. TRIAL SCHEDULED FOR 1/20/04 AT 9:00A.M. CR-KIMMEL	BRADLEY E. SCOTT

*** END OF DOCKET LISTING AS OF 01/15/2004 ***
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A-16

SUPERIOR COURT CRIMINAL DOCKET
(as of 08/12/2004)

Page 3

State of Delaware v. JOHN H BENGE
 State's Atty: DONALD R ROBERTS , Esq.
 Defense Atty: ROBERT M GOFF , Esq.

AKA: JOHN BENGE
 JOHN BENGE

DOB: 10/22/1948

No.	Event Date	Event	Judge
12	09/03/2003	SUBPOENA(S) MAILED.	
13	09/03/2003	CONTINUANCE REQUEST FILED BY D ROBERTS - REF TO JOH - DENIED 09/10/03	
14	09/09/2003	STATE'S WITNESS SUBPOENA ISSUED. DONNA BENGE GEORGE LOVETT EDWARD S. SMITH JOHN BENGE DET. LEE, NCCPD PTLM. CRESPO, NCCPD OFFICER DONAHUE, NCCPD	
16	09/16/2003	DEFENDANT'S LETTER FILED. RE: DEFT IS REQUESTING THAT PROTHO FORWARD THIS LETTER TO THE TRIAL JUDGE	
17	09/16/2003	LETTER FROM JUDGE GRAVES TO EILEEN KIMMEL AS YOU ARE AWARE, MR.BENGE'S TRIAL HERE IN SUSSEX COUNTY CONSUMED SEVERAL WEEKS OF OUR TRIAL CALENDAR. I HAVE BEEN CONTACTED BY NCC JUDGES CONCERNING A STATE'S CASE WHICH IS WELL BEYOND THE SPEEDY TRIAL GUIDELINES AND IS ON THE TRIAL CALENDAR FOR THE 3RD TIME FOR 9/18/03. THE STATE HAS REQUESTED A CONTINUANCE OF THAT TRIAL BECAUSE THEY CANNOT OBTAIN A TRANSCRIPT OF MR. BENGE'S SUSSEX COUNTY TESTIMONY THE STATE BELIEVES THAT THERE IS SOMETHING RELEVANT IN HIS SUSSEX COUNTY TESTIMONY WHICH COULD IMPACT THE NCC CHARGES. (SEE LETTER FOR REMAINDER)	
15	09/22/2003	TRIAL CALENDAR - JURY TRIAL - CONTINUED - COURT CLOSED DUE TO INCLEMENT WEATHER	
18	10/06/2003	REINDICTMENT - TRUE BILL FILED.NO 106 ARRAIGNMENT AND BAIL STATUS 10/28/03 AT 9:30	
19	10/28/2003	ARRAIGNMENT/BAIL STATUS HEARING: DEFENDANT WAIVED READING, ENTERED PLEA OF NOT GUILTY, JURY TRIAL DEMANDED. SECURED BAIL-HELD 40,000.00 UNSECURED BOND 17,000.00	VAVALA MARK STEPHEN
20	10/31/2003	ORDER SCHEDULING TRIAL FILED. TRIAL DATE: 01/13/04 CASE CATEGORY: #2 ASSIGNED JUDGE (CATEGORY 1 CASES ONLY): UNLESS THE COURT IS ADVISED WITHIN 2 WEEKS OF THE UNAVAILABILITY OF NECESSARY WITNESSES, THE COURT WILL CONSIDER THE MATTER READY	

A 17

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

THE STATE OF DELAWARE	:	CRIMINAL ACTION NOS.
	:	02-10-0923 thru 0924, 0927 thru 0928
vs.	:	
	:	SUPERCEDING
JOHN H. BENGE	:	INDICTMENT BY THE
	:	GRAND JURY
I.D. NO. 0210012355	:	

The Grand Jury charges that **JOHN H. BENGE** did commit the following offenses, to-wit:

COUNT 1 - POSSESSION OF A FIREARM DURING COMMISSION OF A FELONY
02-10-0923

JOHN H. BENGE, on or about the 20th day of October, 2002, in the County of Sussex, State of Delaware, did knowingly possess a firearm, a handgun, during the commission of Attempted Murder in the First Degree, a felony, as set forth in Count # 3 of this Indictment which is herein incorporated by reference, in violation of Title 11, § 1447A of the Delaware Code.

COUNT 2 - POSSESSION OF A FIREARM DURING COMMISSION OF A FELONY
02-10-0924

JOHN H. BENGE, on or about the 20th day of October, 2002, in the County of Sussex, State of Delaware, did knowingly possess a firearm, a handgun, during the commission of Burglary in the Second Degree, a felony, as set forth in Count # 5 of this Indictment which is herein incorporated by reference, in violation of Title 11, § 1447A of the Delaware Code.

COUNT 3 - ATTEMPTED MURDER IN THE FIRST DEGREE

JOHN H. BENGE, on or about the 20th day of October, 2002, in the County of Sussex, State of Delaware, did attempt to intentionally cause the death of another person, Edward S. Smith, which acts constituted a substantial step in a course of conduct planned to culminate in the commission of the act of Murder in the First Degree, in violation of Title 11, § 636(a)(1) of the Delaware Code, in violation of Title 11, § 531 of the Delaware Code.

COUNT 4 - ASSAULT IN THE SECOND DEGREE
02-10-0927

JOHN H. BENGE, on or about the 20th day of October, 2002, in the County of Sussex, State of Delaware, while engaged in the commission of the crime of Burglary in the Second Degree, did intentionally assault Donna Benge with a disabling chemical spray with the intent to incapacitate the victim, in violation of Title 11, § 612(a)(7) of the Delaware Code.

COUNT 5 - BURGLARY IN THE SECOND DEGREE
02-10-0928

JOHN H. BENGE, on or about the 20th day of October, 2002, in the County of Sussex, State of Delaware, did knowingly enter or remain unlawfully in a dwelling belonging to Donna Benge with the intent to commit the crime of Attempted Murder in the First Degree therein, in violation of Title 11, § 825(1) of the Delaware Code.

COUNT 6 - POSSESSION OF A FIREARM BY PERSON PROHIBITED
02-10-0929

JOHN H. BENGE, on or about the 20th day of October, 2002, in the County of Sussex, State of Delaware, did have in his possession a handgun, a deadly weapon as defined under 11 Del. C., §222(5), while being under a Family Court protection from abuse order, in violation of Title 11, § 1448(a)(6) of the Delaware Code.

COUNT 7 - POSSESSION OF A FIREARM DURING COMMISSION OF A FELONY

JOHN H. BENGE, on or about the 20th day of October, 2002, in the County of Sussex, State of Delaware, did knowingly possess a firearm, a handgun, during the commission of Attempted Kidnapping in the First Degree, a felony, as set forth in Count # 8 of this Indictment which is herein incorporated by reference, in violation of Title 11, § 1447A of the Delaware Code.

COUNT 8 - ATTEMPTED KIDNAPPING IN THE FIRST DEGREE

JOHN H. BENGE, on or about the 20th day of October, 2002, in the County of Sussex, State of Delaware, did attempt to unlawfully restrain Donna Benge with the intent to facilitate the commission of Attempted Murder in the First Degree and the defendant did not voluntarily release her alive, unharmed and in a safe place prior to trial, which act constituted a substantial step in a course of conduct planned to culminate in the commission of the act of Kidnapping in the First Degree, in violation of Title 11, § 783A(3) of the Delaware Code, in violation of Title 11, § 531 of the Delaware Code..

COUNT 9 - POSSESSION OF A FIREARM DURING COMMISSION OF A FELONY

JOHN H. BENGE, on or about the 20th day of October, 2002, in the County of Sussex, State of Delaware, did knowingly possess a firearm, a handgun, during the commission of Attempted Kidnapping in the First Degree, a felony, as set forth in Count #10 of this Indictment which is herein incorporated by reference, in violation of Title 11, § 1447A of the Delaware Code.

COUNT 10 - ATTEMPTED KIDNAPPING IN THE FIRST DEGREE

JOHN H. BENGE, on or about the 20th day of October, 2002, in the County of Sussex, State of Delaware, did attempt to unlawfully restrain Edward S. Smith with the intent to facilitate the commission of Attempted Murder in the First Degree and the defendant did not voluntarily release him alive, unharmed and in a safe place prior to trial, which act constituted a substantial step in a course of conduct planned to culminate in the commission of the act of Kidnapping in the First Degree, in violation of Title 11, § 783A(3) of the Delaware Code, in violation of Title 11, § 531 of the Delaware Code.

COUNT 11 - CRIMINAL CONTEMPT - 03-04-

JOHN H. BENGE, on or about the 20th day of October, 2002, in the County of Sussex, State of Delaware, did commit the act of Criminal Contempt when the defendant knowingly violated or failed to obey any provision of a protective order issued by Family Court, to wit: the defendant had contact with Donna Benge in violation of Title 11, § 1271A of the Delaware Code.

COUNT 12 - CRIMINAL CONTEMPT - 03-04-

JOHN H. BENGE, on or about the 20th day of October, 2002, in the County of Sussex, State of Delaware, did commit the act of Criminal Contempt when the defendant knowingly violated or failed to obey any provision of a protective order issued by Family Court, to wit: the defendant possessed firearms, in violation of Title 11, § 1271A of the Delaware Code.

A TRUE BILL

(Foreperson)

(Secretary)

s/M. JANE BRADY

ATTORNEY GENERAL

McLaurie Withers

DEPUTY ATTORNEY GENERAL

DATE: April 29, 2003

A22

1 at nearly 1:00 o'clock in the morning and leaves at
2 10:00 o'clock in the morning. He stays nine
3 hours -- less than nine hours. On October 10th, he
4 arrives at 2129, 9:29 p.m. on the 10th, and then
* 5 stays until about 6:00 p.m. the following day. On
6 the 12th, he arrives at 11:00 p.m. and leaves at
7 11:00 a.m. the following day.

8 THE COURT: All right. I will address the
9 first group that I discussed first. Those are
10 Items 1, which is titled April of 2002. Item No.
11 2, which is titled between April and October of
12 2002. Item No. 4, which is early summer of 2002.
13 And Item No. 6, July 25th, 2002.

14 As referred to in Mrs. Withers' July 11,
15 2003 letter to me -- and, Mr. Hurley, without going
16 through the full Getz analysis as to Item No. 4,
17 early summer of 2002, which is the bikini bottom, I
18 am going to simply exclude that, given the nature
19 of the lead charge here, attempted murder. I do
20 not think it proves a great deal, given the nature
21 of the item involved. I think it is somewhat
22 unfairly prejudicial to drop that out in front of
23 the jury. So I will exclude that one. That leaves

KATHY S. PURNELL
OFFICIAL COURT REPORTER

RULING I

A 23

1 us with Item Nos. 1, 2 and 6. I will go over the
2 entire Getz analysis for those items.

3 As I view the case as offered by the State
4 and the State's rationale for those items,
5 Mr. Bengé and his wife were going through a
6 somewhat difficult divorce. Mr. Bengé did not want
7 to be divorced, and Mr. Bengé certainly did not
8 want his wife to establish a relationship with
9 another man. It is, in my view, somewhat difficult
10 to simply separate the charge of attempted murder
11 of that new man in Mrs. Bengé's life from these
12 other relationships and these other factors. That
13 is really how the State has offered this, forming
14 consideration.

15 Looking at the Getz factors, the first
16 factor is the evidence of the other crimes must be
17 material to an issue or ultimate fact in dispute in
18 the case. And Getz was somewhat modified by
19 Terrell and Milligan, where it said that the other
20 acts must be relevant to an element of the State's
21 prima facie case. Certainly, in the attempted
22 murder charge, the hotly contested -- I assume it
23 will be hotly contested -- element was what was

KATHY S. PURNELL
OFFICIAL COURT REPORTER

A 24

1 Mr. Bengé's intent. The State offers these three
2 other things to show that Mr. Bengé was not happy
3 with Mr. Smith because Mr. Smith was the new man in
4 Mrs. Bengé's life, and that was certainly
5 difficult, arguably difficult for Mr. Bengé to
6 accept. So that is both the factual dispute and
7 the element of the law, which is that dispute. So
8 I do certainly think it does touch on a very
9 important issue in this case.

10 Number two, the evidence that the other
11 crimes or matters must be introduced for a purpose
12 sanctioned by Rule 404(b) or any other purpose not
13 inconsistent with the basic prohibition against
14 evidence of bad character or criminal disposition.
15 Again, 404(b) certainly touches on intent and
16 motive, and I think those three other factors that
17 you've discussed, three other factual situations
18 that the State has offered, certainly are there for
19 an explanation of Mr. Bengé's alleged behavior.

20 The next conversation is that the other
21 crimes must be proved by evidence which is plain,
22 clear and conclusive. I do think when you consider
23 all of these three things together, I think that

KATHY S. PURNELL
OFFICIAL COURT REPORTER

1 requirement can be met.

2 Now, obviously, no one is an eyewitness to
3 Mr. Bengé going into Mrs. Bengé's new residence,
4 but we do have Mrs. Bengé's brother seeing
5 Mr. Bengé in the neighborhood. We do have
6 Mrs. Bengé finding keys to her residence in
7 Mr. Bengé's house in Snuff Mill. And we do have
8 proffered testimony that Mrs. Bengé will say that
9 it was Mr. Bengé who had taped her many times
10 before at their residence, at Snuff Mill. And I
11 think when you put all of those things together,
12 the testimony does rise to the level of evidence
13 which is plain, clear and conclusive.

14 The fourth factor is the other crimes must
15 not be too remote in time from the charged offense.
16 All of these things happened within roughly five or
17 six months of the alleged crimes in 2002. So they
18 are certainly not remote in time.

19 The fifth factor is the Court must balance
20 the probative value of such evidence against the
21 unfairly prejudicial effect, as required by Rule
22 403. In that, there is a nine-factor analysis set
23 forth in Deshields. The first one is the extent to

KATHY S. PURNELL
OFFICIAL COURT REPORTER

1 which the point to be proved is disputed. It is
2 certainly a very disputed point in this case,
3 although I think Mr. Hurley made a reasonably good
4 argument that Mrs. Withers will probably make on
5 the issue of intent. And that is, if you show up
6 and shoot somebody a couple of times, well, of
7 course, you intended to kill them. What else could
8 you have intended? But at least at this point that
9 is -- I will say it is a hotly disputed issue.

10 Number two, the adequacy of proof of the
11 prior conduct. I am satisfied of the proof of that
12 conduct. It is difficult to think of why anyone
13 else but Mr. Bengé would have engaged in these
14 things. Mr. Bengé was seen near the house. He had
15 the keys in his home. He had taped his wife
16 before. So I am satisfied that the proof is
17 adequate.

18 Number three, the probative force of the
19 evidence. You know, notwithstanding what people
20 may think, that if you stick a gun at somebody and
21 shoot them, that you, of course, intended to kill
22 them. It is hard to tell how the facts in this
23 case may ultimately play out. Certainly the

KATHY S. PURNELL
OFFICIAL COURT REPORTER

1 defendant could argue that he was merely struggling
2 with Mr. Smith and Mr. Smith was getting the better
3 of him and he did what he did to defend himself.
4 These three things that the State has offered
5 certainly explains why -- regardless of what
6 actually happened, they do explain why the
7 defendant may have wanted to cause serious harm to
8 Mr. Smith. So in that sense, I think they are
9 probative of the point to be proven by the State in
10 which the State must prove in its case in chief.

11 Number four, the proponent need for the
12 evidence. I do not think we can consider these
13 things in a vacuum. I think the jury would
14 certainly be looking for an explanation of why
15 Mr. Benge would want to do this to Mr. Smith.
16 Other than the fact that Mr. Benge is alleged to
17 have shot Mr. Smith, I do not know that the State
18 really has anything else that would offer a
19 rationale for why Mr. Benge was displeased with
20 Mr. Smith, and, therefore, I think the State does
21 have a need for this.

22 The availability of less prejudicial
23 proof. Again, you know, the defense's answer to

KATHY S. PURNELL
OFFICIAL COURT REPORTER

1 this is, well, he shot him with a gun. And as I
2 said before, there may be other explanations for
3 that, that that takes away from the State. The
4 State may have to rely on other things, and I think
5 these are those other things that the State will
6 have to rely on.

7 Number six, the inflammatory or the
8 prejudicial effect of the evidence. I agree that
9 these things are somewhat prejudicial, but
10 certainly in the context of people going through a
11 painful divorce, they are, I do not think at all
12 unusual. People who have been married for a long
13 time may have a difficult time letting go and they
14 may do other things that they would not normally
15 do. I think people understand that. So it is
16 somewhat prejudicial, but I think in the context of
17 a divorce proceeding, it is also understandable.

18 Number seven, the similarity of the prior
19 wrong to the charged offenses. I do not think
20 these things are similar, and I think that is what
21 makes them much less prejudicial.

22 Number eight, the effective list of
23 limiting instructions. We have certainly long

KATHY S. PURNELL
OFFICIAL COURT REPORTER

1 believed that the limiting instructions are
2 effective, and I certainly have no doubt, in the
3 context of these other acts, that those
4 instructions would be effective and could explain
5 the limited purpose for which these three acts
6 would be considered.

7 And number nine, the extent to which prior
8 act evidence would prolong the proceedings. No
9 doubt that these things will prolong the
10 proceedings to some extent. But again, we cannot
11 consider the case in a vacuum. An explanation for
12 why people do things, I think, is certainly
13 necessary and it is an essential part certainly of
14 this case. So it is going to make it a little
15 longer, but it is not going to make it a whole lot
16 longer.

17 So on balance, after having considered
18 those nine factors, I think the probative value of
19 these three things that I mentioned, outweighs any
20 unfair prejudice associated with them. I already
21 considered what I considered to be the seventh Getz
22 analysis, and that is that the other acts must be
23 relevant to an element of the State's prima facie

KATHY S. PURNELL
OFFICIAL COURT REPORTER

A30

1 case that goes to the incident. I certainly think
2 they are all linked to the incident. So I will
3 allow the State to discuss those things.

4 And, Mr. Hurley, if you have any limiting
5 instruction that you would like to submit, I will
6 certainly consider it.

7 MR. HURLEY: Yes. And I'm also going to
8 ask, although in the legal field that limiting
9 instruction works, there are some that are more
10 workable than others because they are easier to
11 understand. I'm going to ask for the usual step of
12 the jury being given a copy of what you would read
13 so they can read along. Because I found that the
14 404 limiting instructions are very difficult for
15 jurors to comprehend just having them read to them
16 as quickly as you would normally read. The very
17 fact that you give them instructions to take with
18 them in the jury room, suggests that that's a
19 better vehicle for communication.

20 THE COURT: Well, I would certainly give
21 this to them. Any Getz instructions that I give
22 during the course of the trial, I put in the final
23 packet. But I do not have any problem with them

KATHY S. PURNELL
OFFICIAL COURT REPORTER

BENGE - Direct

1 A By suicide.

2 Q What type of suicide?

3 A By gunshot.

4 Q Education?

5 A I have a Bachelor's Degree in History from
6 Franklin Marshall College in Lancaster, Pennsylvania,
7 and I have a Jurist Doctorate Degree from Villanova
8 School of Law in Villanova, Pennsylvania.

9 Q What year did you graduate from law school?

10 A 1976.

11 Q Do you have any military service?

12 A Yes. I served in the United States Army
13 from August of 1970 until March of 1972.

14 Q Was that draft or volunteer?

15 A I was drafted.

16 Q Conditions of discharge?

17 A I received an honorable discharge and good
18 conduct medal.

19 Q Did there come a point -- obviously, there
20 came a point in your life when you met Donna. Would
21 you describe when that occurred? How that occurred?

22 A I met Donna in November of 1976.

23 Q And how did the relationship develop?

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A 32

E-73

BENGE - Direct

1 A Well, I met her at the recorder of deeds in
2 the old Wilmington courthouse, and I had spoken with
3 her a few times. I asked her out to lunch, and she
4 said no.

5 So I wasn't getting her attention, and we
6 had a late snow storm that year, actually March of
7 the next year, March of 1977, and I thought if I went
8 over to her house -- I knew where she lived because
9 it was on the way to my uncle's home in Yorklyn,
10 Delaware. I thought if I went over and shoveled the
11 snow in her driveway, she would pretty much have to
12 go out with me. So that's what I did, and we started
13 dating after that.

14 Q When did you marry?

15 A We were married November 17th of 1979.

16 Q And the union has produced how many
17 children, names and ages?

18 A We have three children. Laura is 23, Sarah
19 is 19, and J.P., whose name is John Paul, is 15.

20 Q And the two of you, until your separation,
21 raised them jointly?

22 A That's correct.

23 Q After your separation, what were the primary

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A 33

BENGE - Direct

1 care situations with regard to your children?

2 A We -- J.P. was the only true minor child.

3 Sarah turned 18 in April of 2002. J.P. was then 13,

4 I guess. Yeah, 13. And J.P. -- custody and

5 parenting of J.P. was shared fifty-fifty in all

6 respects.

7 Q You were married how many years before your

8 divorce in May of 2002?

9 A It would be 22 and almost a half, I guess.

10 Q And had you been married before that time?

11 A No.

12 Q And have you been with another woman since

13 that time?

14 A No.

15 Q You heard Donna testify last week regarding

16 the fact that -- regarding her interpretation of the

17 facts that led to the demise of the relationship. Do

18 you agree with how she characterized things?

19 A Mr. Hurley, I don't know. I don't know what

20 happened. I don't know what went wrong.

21 Q From your point of view, what did you see

22 happening around you?

23 A What Donna told me she believed was -- was

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A 34

BENGE - Direct

1 wrong. I had to accept her explanation as to why she
2 felt the way she felt. That's all I can say.

3 Q Explain to the jury what was being told to
4 you that you ended up in that motel?

5 A Donna told me in the winter of 2000 that
6 people change and that she thought that we should
7 separate. I told her that I believe that was the
8 worse thing that could be imaginable for herself, for
9 me, for the kids, for everything that we had held
10 dear to us throughout our lives together.

11 I thought that was just the worse thing
12 because I told her you will drift. You will find
13 someone else. And that will destroy everything that
14 we have and everything that we are. Everything that
15 we've worked to achieve in the 21 years or so that we
16 had been married at that point in time. And that did
17 not seem to move her at all.

18 She continued speaking along those terms.
19 She grew more distant. She grew less willing to
20 speak with me. I had suggested that we go to
21 counseling because I had been, myself, to a counselor
22 and spoken with him for some period of time. I
23 suggested that Donna come with me because the

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A35

BENGE - Direct

1 counselor had told me let's see if we can't get your
2 wife in here and sit down and see what the problems
3 are and what we can resolve.

4 I asked Donna if she would go, and she said,
5 "Yes, she would." I said, "Will you participate,"
6 and she said, "I will go to state my point of view.
7 I will go to tell the counselor how I feel about
8 things, and that's all." And I said, "That's not
9 participating. I want this to be something that we
10 go to try to work on our problems, to try to save
11 what we have, to make it work again." And she said,
12 "No." That's not something that she was willing to
13 do.

14 Q We heard her describe life in the Benge
15 household around 2000 where you were not working, you
16 were drinking, and, apparently, sitting on your
17 behind doing nothing. Would you give your viewpoint
18 with regard to her description in that regard?

19 A It's true, indeed, Mr. Hurley, that I was
20 not working. But I'm not the kind of person who can
21 simply sit around and do nothing. I was working in
22 and around the house doing any number of things.

23 I was speaking with people about the

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A 36

BENGE - Direct

1 week that I don't usually consume alcohol.

2 If you were asking me was I intoxicated all
3 the time, no, I was not. I do not drink to excess.
4 I do not drink to become intoxicated. I do not drink
5 in order to black out. I believe myself to be a
6 social drinker. I never drink during the day. I
7 drink only after work is done, usually not before
8 5:00 in the afternoon.

9 Q In your initial efforts trying to decipher
10 what was going on in Donna's mind to tell you what
11 she told you, did it occur to you in the initial
12 stage that it might be an involvement with another
13 male?

14 A It did not.

15 Q Why not?

16 A Donna told me she was faithful to me. I
17 believe that. My fear was that she would go to
18 someone for consolation, for companionship, because
19 she's always been someone who has had male friends.
20 I have always accepted that. I never viewed that as
21 threatening, but I thought one or more of those
22 relationships might turn into something more than
23 just friendship. And that she would drift from me,

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A 37

BENGE - Direct

1 and that I would lose her.

2 But I believe her to have been faithful
3 because I asked her, directly, "Is there anyone that
4 is replaced me in your heart." And several occasions
5 that I asked her that, she said, "No."

6 Q As you look back on it now, did there come a
7 time when you can see the first crack in your belief
8 that she wasn't involved with somebody else?

9 A The first crack in my belief, my faith in
10 her, my unquestioning faith in her, occurred
11 approximately in October of 2000.

12 Q Explain that, please.

13 A We had always went to the beach with my
14 family in August, the first week in August. And when
15 we came home, several months later in August, I was
16 cleaning the dining room in anticipation of using the
17 dining room table to repair some furniture.

18 That's another thing that I did. Donna has
19 a lot of birdseye maple furniture. Over the years,
20 it had gotten pretty beat up. I repaired a lot of
21 that. Using the dining room table, I shouldn't have
22 done that, but it was the only work surface that I
23 had.

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A38

BENGE - Direct

1 won't forget, and there are several other dates that
2 I'll never forget.

3 Q What occurred on September 21st that you
4 will never forget?

5 A Donna received a phone call from her friend
6 in Florida. I answered the phone. And gave the
7 phone to Donna. And Donna and her friend, who spoke
8 very often on the phone, had a long conversation. I
9 was -- it was in the early evening. I was doing,
10 pardon me, homework with J.P., and perhaps with
11 Sarah. And it wasn't until the next day that I
12 listened to the conversation that she had, that Donna
13 had had with her friend.

14 Q What portion of that conversation had any
15 interest in terms of it, the topic, that we are
16 discussing?

17 A Well, Donna's voice was very childlike. It
18 was something -- I hadn't ever heard that tone of
19 voice that she was using. I even wondered if it was
20 her. But she was speaking with her friend, and I
21 guess they were both tired because they both started
22 yawning.

23 Donna's friend, whose name is Lynn, said to

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A39

BENGE - Direct

1 Donna, "We are getting old. Remember how we used to
2 stay up, and you can't do that anymore. You must be
3 really getting old." Donna said, "No. No. No. I
4 can still stay up." Donna said, "I'm having a hard
5 time. Sometimes it's 3:00 a.m. before I go to bed."
6 And Lynn said, "Well, why? You can't sleep." And
7 Donna said, "No, because I don't want to go to bed."
8 And Lynn said, "Well, what are you doing?"
9 And Donna laughed, and, again, it was this very, very
10 childish, child-like sounding laugh. Donna said,
11 "I'm having fun." And Lynn said, "I don't
12 understand. Fun where?" And Donna said, "At Oak
13 Grove." And Lynn said, "You mean when John is not
14 there," and Donna said, "Yes." And Lynn said, "I'm
15 stupid. I'm stupid. I don't know what you mean."
16 And Donna just laughed, and then Lynn said, "Oh, oh,
17 I get it. I'm stupid. I understand." And then they
18 went onto talk about some other things.

19 Q After you heard that, did you approach or
20 confront Donna?

21 A No. I did not. I was very shocked by that.
22 I did not approach her. I did not ask her about it.
23 I don't believe I ever discussed that telephone call

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A40

BENGE - Direct

1 with Donna.

2 Q What is the next event that occurs?

3 A Well, Laura was going to the University of
4 South Carolina. She was in her final year, her
5 senior year. She returned home the weekend of
6 October the 15th. South Carolina has a fall break.
7 I'm not sure why because it's a big football school,
8 and a fall weekend is a big deal down there. But
9 Laura came home, and she was with us for a while.

10 On Monday night, October the 15th, Laura was
11 still there. She wasn't going to return to school
12 until the next day, and Donna, very
13 uncharacteristically, decides she was going to go to
14 work. She did not say she had a project she had to
15 get done or anything she needed to finish.

16 And Donna and Laura have always had a very
17 special, special relationship. Donna calls Laura my
18 baby even though J.P. is the youngest child, and for
19 Donna to leave the house when Laura was home,
20 especially since Laura was away from the family, was
21 very unusual. It seemed very strange to me that
22 Donna was doing that.

23 Q What happened?

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A 41

BENGE ~ Direct

1 A Well, I was, again, doing something I'm
2 very, very ashamed of. I listened to the phone calls
3 from that day, and there was a phone call that Donna
4 had placed earlier in the day to the Wyndham Motel in
5 Wilmington, and she had spoken to her boss. The
6 fellow that you called John Doe or Jim Doe, and Donna
7 had gone to see him at his hotel room that Monday
8 night, October 15th.

9 Q Do you remember any of the specifics of the
10 conversation that you heard that had an impact on
11 you?

12 A Yes, I do.

13 Q What?

14 A Donna asked Mr. Doe if he wanted her to
15 bring dinner to his room, and he said, "He wasn't
16 sure. It didn't matter." She asked him which room
17 he was in, and he said, "Room 801," and Donna said,
18 "Up there again." And he said, "That's right."

19 And then he asked her if she was coming to
20 see him, and she said, "Yes. But I have a lot of
21 work to do," and Mr. Doe said, "So you're not going
22 to make love to me tonight." And Donna said, "No.
23 No, I'm not."

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A 42

BENGE - Direct

1 And Mr. Doe hesitated for a moment. His
2 voice got caught, and Donna said, "I have a lot of
3 work to do. I have to go to work. So don't touch me
4 because you know what happens." And Mr. Doe said,
5 "You know what happens when you touch me. So it's
6 something mutual. So I guess we better not touch
7 each other."

8 Q Was Donna your wife when you heard that
9 conversation?

10 A Yes.

11 Q Was there any agreement between the two of
12 you that allowed you to go out, from your point of
13 view?

14 A Go out?

15 Q With other people, sexually?

16 A No. No. We had a strictly monogamous,
17 committed relationship, husband and wife. If I had
18 suggested anything of that nature to Donna, I would
19 have expected her to leave me immediately. And if
20 she had suggested that she wanted to be with other
21 people intimately, I would have been completely
22 devastated, surprised mostly, but devastated that she
23 felt that need or desire. We had committed to each

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A 43

BENGE - Direct

1 other. We had taken vows to cleave only to one
2 another.

3 Q You have heard from Donna that you
4 confronted her about that conversation. Give us your
5 version. She gave us her version.

6 A I called Donna on the telephone at the
7 office the next day, which would be Tuesday, after
8 Laura had returned to school.

9 And I said, "What are you doing? What is
10 going on with your boss?" And she said, "What are
11 you talking about? There is nothing going on with my
12 boss." And I said, "Donna, I know that you were in
13 Room 801 at Wyndham Hotel last night with him," and
14 she said, "How do you know? Are you having someone
15 follow me?" I said, "No. What is going on with your
16 boss? Tell me," and she would not comment on that.

17 She said, "I am at work. I have to get back
18 to work." And I said, "Donna, we have to talk about
19 this. We have a family. We've got a life that we
20 lived together. We have a future together. And I
21 want to talk with you about this." And she said that
22 she couldn't talk, and that was pretty much the end
23 of the conversation.

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A44

BENGE - Direct

1 Q When did you next talk to her about the John
2 Doe-Jim Doe topic?

3 A I tried to speak with her during the week,
4 but I don't recall that I was successful, and she was
5 going to Oak Grove that weekend. I did not go
6 Friday.

7 I drove J.P. down on Saturday, and Saturday
8 night I got there with J.P. about 8:00, after dark.
9 And I said, "Please, Donna, take a walk with me," and
10 as we had done so many times before, for decades, we
11 walked around Oak Grove and down to Sixth Street, and
12 I questioned her about her relationship with her
13 boss, what she was doing. And she was very evasive.
14 And I can recall I just couldn't get a straight
15 answer from her.

16 And then as we were walking on Sixth Street,
17 in an area where there were no cars parked, and there
18 was no one around, and it's sort of a -- it's not a
19 dead end, but it's sort of a portion of the street
20 where there are really no houses. No reason for
21 anybody to be there.

22 Stacey Smith came walking along very slowly,
23 walked on the other side of the road, as if he

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A-45

BENGE - Direct

1 somehow thought -- it seemed to me that he ought to
2 be a part of the conversation, and I stopped talking
3 to Donna, and she said hello to Stacey, and I waited
4 for him to pass by, which was a long time. He was
5 looking at us both, and we were interrupted.

6 And I came back, and I said, "Donna, I know
7 you were with him, and I want to know are you having
8 sex with him. Did you sleep with him?" And she
9 said, "No." And I said, "Well, was there sexual
10 contact," and she said, "Yes, John. Yes, there was a
11 lot of it."

12 And I said, "What are you doing? You can't
13 think this is good for you. You can't think a
14 relationship with your boss is going to go anywhere.
15 He is married. He has a wife. He has children.
16 This is not someone that is going to make a
17 commitment to you, and you're jeopardizing your job.
18 Don't you read the newspapers? A sexual relationship
19 at work is a powder keg waiting to explode in this
20 day and age. It's just not something that people
21 should do. It's not appropriate at all for that to
22 occur at work. You are jeopardizing your job."

23 And that was pretty much the end of the

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A 46

BENGE - Direct

1 conversation. I got in the car and went home.

2 Q On that occasion, or the later occasion, did
3 you get more specific with regard to a description of
4 the sexual activity?

5 A I spoke with her about that. I told her the
6 next week -- I said, "This has got to stop. You are
7 going to tell Mr. Doe that he is going to stop it.
8 He is going to tell his wife. He is going to tell
9 you that he told his wife. You are going to tell me
10 that he has told his wife. And that's the end of
11 that. It's going to stop.

12 And if you don't tell him, I will call his
13 wife, and I will tell her what's going on. And if
14 you don't tell me that has been done, then I will
15 call his boss, and I will tell him, Mr. Doe's boss,
16 what is going on."

17 And I told Donna, "I forgive you."

18 Q Was there any reference to any specific
19 sexual activities, either made by you and
20 acknowledged by her, or made by her?

21 A Yes, Mr. Hurley, there was. I was upset
22 with her at one point. This was some weeks later.
23 After I confronted her about the necessity for

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A 47

BENGE - Direct

1 Mr. Doe to inform his wife. I confronted her, and
2 yes, I was trying to see if she had understood how
3 inappropriate it was for her to be carrying on with
4 someone at work, and I just wasn't getting anywhere,
5 and I was frustrated, and yes, I did say something
6 about what had been going on between them. I'm not
7 proud of it, but I said it.

8 Q As a result of that comment, what was your
9 understanding of the nature of the contact between
10 them, the sexual contact?

11 A That they had not had sex involving
12 penetration of Donna vaginally, but she had sex
13 involving manual or oral relations.

14 Q Did you know where he worked?

15 A Oh, yes. Yes, I did.

16 Q Did you go and confront him violently?

17 A No. In fact, I didn't speak with Mr. Doe
18 for almost a full year after that.

19 Q Did you get violent with her?

20 A No. Mr. Hurley, I did not. I told her that
21 I forgave her. That I would forgive her a thousand
22 times.

23 Q After the October 15th conversation in the

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OFFICIAL COURT REPORTER

A 48